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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,363	12/03/2003	Michael J. Botich	P01445US3	6933
65008 MDC INVEST	7590 01/07/2008 MENT HOLDINGS, INC.	EXAM	EXAMINER	
c/o INTELLEVATE			MACNEILL, ELIZABETH	
P.O. BOX 52050 MINNEAPOLIS, MN 55402			ART UNIT	PAPER NUMBER
			3767	
			MAIL DATE	DELIVERY MODE
		•	01/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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	Application No.	Applicant(s)
	10/727,363	BOTICH ET AL.
Office Action Summary	Examiner	Art Unit
	Elizabeth R. MacNeill	3767
The MAILING DATE of this communication appeared for Reply	pears on the cover sheet with the	correspondence address
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUNICATION 136(a). In no event, however, may a reply be towill apply and will expire SIX (6) MONTHS from the cause the application to become ABANDON	N. mely filed n the mailing date of this communication. ED (35 U.S.C. § 133).
Status		
 1) ⊠ Responsive to communication(s) filed on 20 € 2a) ☐ This action is FINAL. 2b) ⊠ This 3) ☐ Since this application is in condition for alloware closed in accordance with the practice under the condition of the cond	s action is non-final. ance except for formal matters, pr	
Disposition of Claims		
4) ☐ Claim(s) 1-4 and 6-14 is/are pending in the ap 4a) Of the above claim(s) 2 and 11-13 is/are w 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1,3,4,6-10 and 14 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or	vithdrawn from consideration.	
Application Papers		
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) accomposed and applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Examine 11.	cepted or b) objected to by the drawing(s) be held in abeyance. Section is required if the drawing(s) is o	ee 37 CFR 1.85(a). bjected to. See 37 CFR 1.121(d).
Priority under 35 U.S.C. § 119		
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Bureat * See the attached detailed Office action for a list	ts have been received. ts have been received in Applica prity documents have been receiv nu (PCT Rule 17.2(a)).	tion No red in this National Stage
Attachment(s) 1)	4) ☐ Interview Summar	v (PTO-413)
2) Notice of Preferences Cited (PTO-592) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4)	Date

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DETAILED ACTION

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 October 2007 and 20 December 2007 has been entered.

Election/Restrictions

2. Claims 2 and 11-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10 August 2005.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

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be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claim 6 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,436,070. Although the conflicting claims are not identical, they are not patentably distinct from each other because '070 requires a "projecting position" versus an "extending position," does not require a catheter, and does not refer to a "latched position" but does refer to the arm controlling displacement of the needle from the extended to the retracted position. These differences are not considered patentably distinct.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 and 6-14 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe a pivot in reference to elected species IX, Figs 25-27 elected 10 August 2005. See Remarks filed 20 December 2007, "Support for the amendments to claims 1, 6, and 15 may be found

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in the figures and the text of the Present Application with respect to all of the embodiments disclosed except those shown in FIGS. 21-27."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM Mus MM

KEVIN C. SIRMONS SUPERVISORY PATENT EXAMINER

Theren Chromons